

### REMARKS

Claims 9-13, 33-37 and 49-53 are pending in this application. Of these, claims 1, 33 and 49 are independent. Favorable reconsideration and further examination are respectfully requested.

#### Claim Objections

The foregoing amendments are understood to overcome the claim objections.

#### Claim Rejections - 35 U.S.C. § 112

The foregoing amendments are understood to overcome the rejections under 35 U.S.C. § 112.

#### Claim Rejections - 35 U.S.C. § 103

Claims 9-13, 33-37 and 49-53 are rejected under 35 U.S.C. 103(a) as being rendered obvious over Yeh (U.S. Pat. Pub. No. 2005/005009). Applicant respectfully requests that the examiner withdraw the rejection of claims 9-13, 33-37 and 49-53, because Yeh fails to qualify as prior art under any section of 35 U.S.C. 102.

The priority date of the present application is October 1, 2003. Because Yeh's priority date is September 3, 2003 and Yeh's publication date is March 3, 2005, Yeh could only potentially qualify as prior art under 35 U.S.C. 102(e). However, because the foregoing claims were rejected under 35 U.S.C. 103(a), Yeh is disqualified as prior art under 35 U.S.C. 103(c).

35 U.S.C. 103(c) states:

**(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same**

**person or subject to an obligation of assignment to the same person. (35 U.S.C. 103 (c)(1)).**

Regarding the sufficiency of evidence required to establish common ownership, the MPEP, at section 706.02(1)(2), states:

**The following statement is sufficient evidence to establish common ownership of, or an obligation for assignment to, the same person(s) or organizations(s):**

**Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.**

...

**The statement concerning common ownership should be clear and conspicuous (e.g., on a separate piece of paper or in a separately labeled section) in order to ensure that the examiner quickly notices the statement.**

Applicant provides the suggested Statement Regarding Common Ownership below.

**Statement Regarding Common Ownership**

At the time the claimed invention of the present application was made, the subject matter of Yeh and the claimed invention of the present application were "owned by the same person or subject to an obligation of assignment to the same person:" Google Inc.

Accordingly, the examiner's reliance on Yeh in the 35 U.S.C. 103(a) rejection of claims 9-13, 33-37 and 49-53 is improper.

For at least any or all of these reasons, claim 9 is understood to be patentable over the combination of cited art. Claims 33 and 49 include similar limitations to claim 9 and are therefore understood to be patentable for at least the reasons discussed above with regard to

claim 9. All of the dependent claims are understood to be patentable for at least similar reasons as those for the claims on which they depend are patentable. In addition, due to the clear distinction of the independent claims over the combination of cited art, Applicant believes it unnecessary to argue the further novel features of the dependent claims.

Canceled claims, if any, have been canceled without prejudice or disclaimer. Any circumstance in which the applicant has (a) addressed certain comments of the examiner does not mean that the applicant concedes other comments of the examiner, (b) made arguments for the patentability of some claims does not mean that there are not other good reasons for patentability of those claims and other claims, or (c) amended or canceled a claim does not mean that the applicant concedes any of the examiner's positions with respect to that claim or other claims.

The required fee for the Petition for Extension of Time and excess claim fees is being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account Authorization. Please apply any other charges or credits to deposit account 06-1050, referencing Attorney Docket No. 16113-0767001.

Respectfully submitted,

Date: November 16, 2011 \_\_\_\_\_

/ Christina V. McDonough/

Christina V. McDonough

Reg. No. 64,612

Customer Number 26192  
Fish & Richardson P.C.  
Telephone: (617) 542-5070  
Facsimile: (877) 769-7945